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Crime prevention and criminal justice

Mutual assistance and international cooperation in criminal matters

Note by the Secretariat

By its resolution 1998/15, the Economic and Social Council recommended to the General Assembly the adoption of a draft resolution entitled "Mutual assistance and international cooperation in criminal matters". The text of the draft resolution is reproduced below.

The General Assembly,

Bearing in mind that the United Nations model treaties on international cooperation in criminal matters provide important tools for the development of international cooperation,

Convinced that existing arrangements governing international cooperation in criminal justice must be regularly reviewed and revised to ensure that the specific contemporary problems of fighting crime are effectively addressed,

Bearing in mind that developing countries and countries with economies in transition may lack the resources for developing and implementing treaties on mutual assistance in criminal matters,

Convinced that complementing and supplementing the United Nations model treaties will contribute to increased efficiency in combating criminality,

Recalling its resolution 45/117 of 14 December 1990, in which it adopted the Model Treaty on Mutual Assistance in Criminal Matters, annexed to that resolution,

Recalling also its resolution 52/88 of 12 December 1997,

Commending the work of the Intergovernmental Expert Group Meeting on Mutual Assistance in Criminal Matters, held at Arlington, Virginia, United States of America, from 23 to 26 February 1998, to implement in part General Assembly resolution 52/88 by proposing complementary provisions for the Model Treaty elements for model legislation

on mutual assistance in criminal matters, and training and technical assistance for national officials engaged in that field,

Commending also the Government of the United States of America for hosting the Intergovernmental Expert Group Meeting for its substantial contribution to the organization of the Intergovernmental Expert Group Meeting and for the support given by the National Institute of Justice of the United States Department of Justice through the programme of the United Nations On-line Crime and Justice Clearing House,

1. *Welcomes* the report of the Intergovernmental Expert Group Meeting on Mutual Assistance in Criminal Matters, held at Arlington, Virginia, United States of America, from 23 to 26 February 1998;[1]

2. *Decides* that the Model Treaty on Mutual Assistance in Criminal Matters should be complemented by the provisions set forth in annex I to the present resolution;

3. *Encourages* Member States, within the framework of national legal systems, to enact effective legislation on mutual assistance and calls upon the international community to give all possible assistance in order to contribute to the achievement of that goal;

4. *Requests* the Secretary-General to elaborate, in consultation with Member States, for submission to the Commission on Crime Prevention and Criminal Justice, model legislation on mutual assistance in criminal matters, in order to enhance effective cooperation between States, taking into account the elements recommended by the Expert Group on Mutual Assistance in Criminal Matters for inclusion in such model legislation, which are set forth in annex II to the present resolution;

5. *Invites* Member States to take into account the Model Treaty in negotiating treaties at the bilateral, regional or multilateral level, as appropriate;

6. *Also invites* Member States to consider, where applicable and within the framework of national legal systems, the following measures in the context of the application of treaties on mutual assistance in criminal matters or other arrangements for such mutual assistance:

(*a*) Establishing or designating a national central authority or authorities to process requests for assistance;

(*b*) Undertaking regular reviews of their treaties on mutual assistance in criminal matters or other arrangements and implementing legislation, as well as taking other necessary measures for the purpose of rendering such arrangements and legislation more efficient and effective in combating established and emerging forms of crime;

(*c*) Concluding asset-sharing arrangements as a means of enabling forfeited proceeds of crime to be used to strengthen the capacity of national criminal justice systems and contributing a part of such proceeds to programmes such as those aimed at enhancing national capacities for fighting crime in developing countries and in countries with economies in transition, paying due consideration to the rights of bona fide third parties;

(*d*) Making use of videoconferencing and other modern means of communications for, *inter alia*, transmission of requests, consultation between central authorities, taking of testimony and statements, and training;

7. *Encourages* Member States to promote, on a bilateral, regional or worldwide basis, measures to improve the skills of officials in order to strengthen mutual assistance mechanisms, such as specialized training and, whenever possible, secondment and exchanges

[1] E/CN.15/1998/7, annex.

of relevant personnel, and to consider the use of videoconferencing and other modern means of communications for training purposes;

8. *Reiterates* its invitation to Member States to provide to the Secretary-General copies of relevant laws and information on practices related to international cooperation in criminal matters and, in particular, to mutual assistance in criminal matters, as well as updated information on central authorities designated to deal with requests;

9. *Requests* the Secretary-General:

(*a*) To regularly update and disseminate the information mentioned in paragraph 8 above and, in particular, to prepare, for use by Member States, a directory of central authorities responsible for mutual legal assistance, drawing on the information already collected during the Intergovernmental Expert Group Meeting;

(*b*) To continue to provide advisory and technical cooperation services to Member States requesting assistance in drafting and implementing appropriate national legislation, and developing and implementing bilateral, subregional, regional or international treaties on mutual assistance in criminal matters, drawing on the expertise of Member States as appropriate;

(*c*) To provide, in cooperation with interested Member States and relevant intergovernmental organizations, training on mutual assistance law and practice for personnel in appropriate governmental agencies and for central authorities of requesting Member States in an effort to develop the necessary skills and to improve communication and cooperation aimed at enhancing the effectiveness of mutual assistance mechanisms;

10. *Requests* the Secretary-General, in cooperation with interested Member States, relevant intergovernmental organizations and the institutes constituting the United Nations Crime Prevention and Criminal Justice Programme network, to develop appropriate training materials for use in providing to requesting Member States the technical assistance referred to above;

11. *Commends* the International Institute of Higher Studies in Criminal Sciences of Siracusa, Italy, for its offer to organize and host up to two training seminars for mutual assistance officials and invites interested Member States to provide voluntary contributions to offset the travel costs of officials from developing countries and from countries with economies in transition and to make substantive contributions to the seminars;

12. *Urges* Member States and funding agencies to assist the Secretary-General in implementing the present resolution through voluntary contributions to the United Nations Crime Prevention and Criminal Justice Fund;

13. *Requests* the Secretary-General to ensure the full implementation of the provisions of the present resolution.

Annex I

Complementary provisions for the Model Treaty on Mutual Assistance in Criminal Matters

Article 1

1. In paragraph 3 (*b*), replace the words "Optional Protocol to" with the words "article 18 of".

Article 3

2. In the title of article 3 replace the word "competent" with the word "central".

3. Insert the word "central" before the word "authority".

4. Add the following footnote to the end of article 3:

"Countries may wish to consider providing for direct communications between central authorities and for the central authorities to play an active role in ensuring the speedy execution of requests, controlling quality and setting priorities. Countries may also wish to agree that the central authorities are not the exclusive channel for assistance between the Parties and that the direct exchange of information should be encouraged to the extent permitted by domestic law or arrangements."

Article 4

5. In the footnote to paragraph 1, replace the last sentence with the following:

"Countries may wish, where feasible, to render assistance, even if the act on which the request is based is not an offence in the requested State (absence of dual criminality). Countries may also consider restricting the requirement of dual criminality to certain types of assistance, such as search and seizure."

6. In paragraph 1 (*d*) delete the words "that is subject to investigation or prosecution in the requested State or".

7. Add the following footnote to the end of paragraph 4:

"States should consult in accordance with article 20 before assistance is refused or postponed."

Article 5

8. Add the following footnote to the end of paragraph 2:

"Countries may wish to provide that the request may be made by modern means of communication, including in particularly urgent cases verbal requests that are confirmed in writing forthwith."

Article 6

9. Add the following footnote to the end of article 6:

"The requested State should secure such orders, including judicial orders, as may be necessary for the execution of the request. Countries may also wish to agree, in accordance with national legislation, to represent or act on behalf or for the benefit of the requesting State in legal proceedings necessary to secure such orders."

Article 8

10. Add the following words to the end of the footnote to article 8:

", or restrict use of evidence only where the requested State makes an express request to that effect."

11. Add the following words to the beginning of article 8: "Unless otherwise agreed,".

Article 11

12. Add the following footnote to the end of paragraph 2:

"Wherever possible and consistent with the fundamental principles of domestic law, the Parties should permit testimony, statements or other forms of assistance to be given via video link or other modern means of communication and should ensure that perjury committed under such circumstances is a criminal offence."

Article 12

13. In the English version of paragraph 1, replace the word "required" with the words "called upon".

14. Add the following footnote to the end of the article:

"Some countries may wish to provide that a witness who is testifying in the requesting State may not refuse to testify on the basis of a privilege applicable in the requested State."

New article 18

15. Insert as new article 18, entitled "Proceeds of crime", paragraphs 1 to 6 of the Optional Protocol to the Model Treaty on Mutual Assistance in Criminal Matters concerning the proceeds of crime, and delete the remaining text of the Optional Protocol, including the footnotes.

16. Replace the word "Protocol" with the word "article" throughout the new article.

17. Add the following footnote to the end of the title of the new article:

"Assistance in forfeiting the proceeds of crime has emerged as an important instrument in international cooperation. Provisions similar to those outlined in the present article appear in many bilateral assistance treaties. Further details can be provided in bilateral arrangements. One matter that could be considered is the need for other provisions dealing with issues related to bank secrecy. Provisions could be made for the equitable sharing of the proceeds of crime between the Contracting States or for consideration of the disposal of the proceeds on a case-by-case basis."

18. Add the following footnote to the end of paragraph 5:

"The Parties might consider widening the scope of the present article by the inclusion of references to victims' restitution and the recovery of fines imposed as a sentence in a criminal prosecution."

Articles 18-21

19. Renumber the former article 18 (it should become article 19) and renumber all subsequent articles accordingly.

Annex II

Elements recommended for inclusion in model legislation on mutual assistance in criminal matters

A. General recommendation

1. Model legislation on mutual assistance in criminal matters should reflect in statutory terms the general provisions of the Model Treaty on Mutual Assistance in Criminal Matters, together with the recommendations contained in annex I to the present resolution. To the extent possible, it should provide different options for States with different legal systems.

Where relevant, it should take into account provisions of the model bill on mutual assistance in criminal matters developed in 1998 by the United Nations International Drug Control Programme.

B. Scope

2. The model legislation should provide a full range of flexible options for assuming mutual assistance obligations. When there is a treaty on mutual assistance in criminal matters, the terms of that treaty should govern the relationship. The legislation should also permit mutual assistance to be provided without a treaty, with or without reciprocity.

C. Jurisdiction

3. The model legislation could contain provisions to provide for jurisdiction, *inter alia*:

(a) To issue judicial orders necessary for executing mutual assistance requests;

(b) To authorize the requested State to act on behalf or for the benefit of, or to represent the interests of, the requesting State in legal proceedings necessary for executing mutual assistance requests;

(c) To punish perjury committed during mutual assistance, in particular perjury committed during videoconferencing.

D. Procedure

4. The model legislation should include options for procedures dealing with both incoming and outgoing requests for assistance in criminal matters. Such procedures should be in conformity with, whenever applicable, international and regional human rights instruments. Where no treaty provision is applicable, the legislation could also contain provisions on specific forms of mutual assistance, including testimony and other forms of cooperation carried out via video link, cooperation in asset seizure and forfeiture, and temporary transfer of witnesses in custody.

5. The model legislation could provide for the establishment of a central authority or authorities for the receipt and transmission of requests and the provision of advice and assistance to relevant authorities. The legislation could also specify the extent of the central authority's powers.

E. Communications

6. Where no treaty provision is applicable, the legislation should set forth the means of communicating between the requesting State and the requested State, allowing for use of the most modern forms of communication.